

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SHIRLEY BRITTON,

Plaintiff,

v.

Case No. 05-C-1232

**JO ANNE B. BARNHART,
Commissioner, Social Security Administration,**

Defendant.

DECISION AND ORDER

On November 28, 2005, the plaintiff Shirley Britton (“Britton”) filed her complaint, in this Court, seeking review of a decision of the defendant Commissioner of Social Security Administration denying Britton’s request for Supplemental Security Income (SSI). Accompanying the complaint is Britton’s application and affidavit for leave to proceed *in forma pauperis* (IFP), which the Court now considers.

To authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: (1) whether the litigant is unable to pay the costs of commencing the action; and (2) whether the action warrants dismissal because it is frivolous or malicious, fails to

state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2).

Britton's affidavit reveals that she is currently unemployed and resides in a household with her husband, two minor children, and an adult child. The Court presumes that Britton's spouse is unemployed based on his receipt of SSI and similar state benefits. Britton avers that her family receives \$236 monthly in food stamps and has lost its home due to foreclosure. Though she is represented by counsel in the instant action, Britton's affidavit reveals that she has no cash and her family's debts outstrip its income. Based on the information contained in the submitted affidavit, the Court is satisfied that Britton is unable to pay the filing fee and costs associated with commencing her action.

Next, the Court inquires whether Britton's action warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Britton's complaint alleges that the Commissioner's conclusions and findings of fact were not supported by substantial evidence and were contrary to established law. (Compl. ¶ 7.) Britton claims that the Commissioner's credibility findings were deficient as a matter of law. (*Id.* at ¶ 9.) Additionally, the Administrative Law Judge (ALJ) considering Britton's application purportedly did not attribute proper weight to the opinions of Britton's treating sources. (*Id.* at ¶ 10.) Nor, Britton continues, did the ALJ perform a function-by-function

assessment of her residual functional capacity as required under prevailing Social Security Administration Rules. (*Id.* at ¶ 11.)

For relief, Britton asks the Court to find that she is entitled to disability benefits, or, in the alternative, to remand the case for further proceedings. Additionally, she seeks an award of attorney fees under the Equal Access to Justice Act because the Commissioner's adjudication of her application for SSI was not substantially justified.

Britton, based on her complaint, has stated a claim for relief that is neither frivolous nor malicious and, if proven, may entitle her to relief. Accordingly, the Court will grant her request to proceed IFP.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY
ORDERED THAT:**

Britton's Motion to Proceed *In Forma Pauperis* (Docket No. 2) is **GRANTED**.

Dated at Milwaukee, Wisconsin this 24th day of February, 2006.

BY THE COURT

s/ Rudolph T. Randa _____
Hon. Rudolph T. Randa
Chief Judge